



¶1 Appellants Blanca and Desi Sanchez (Sanchezes) challenge the superior court's confirmation of the arbitration award entered against them and in favor of appellee MVR Development, LLC (MVR). Sanchezes argue the court abused its discretion by refusing to grant a continuance of the confirmation hearing, by finding a valid arbitration agreement, and by confirming the award based on what they assert is an unconscionable contract. Because, based on this available record, the superior court properly decided each issue, we affirm.

¶2 The relevant facts are undisputed. Sanchezes contracted to purchase a house from MVR. The purchase contract included a mandatory arbitration provision. Sanchezes applied for a loan to complete the purchase, but were apparently unable to obtain the loan. Because Sanchezes did not complete the purchase, MVR instituted an arbitration action against them for breach of contract. The arbitrator entered an award in which he found the parties had agreed to arbitrate the dispute, the contract was binding, Sanchezes breached it, and MVR had been damaged.

¶3 MVR then sought confirmation of the award by the superior court. Sanchezes opposed confirmation, arguing the purchase contract was unenforceable. The superior court confirmed the award and Sanchezes appealed.

¶4 Sanchezes first argue the superior court abused its discretion by refusing to continue the confirmation hearing after Mr. Sanchez became ill and missed his flight to Tucson. We review the superior court's refusal to grant a continuance for an abuse of

discretion. *See McDowell Mountain Ranch Land Coal. v. Vizcaino*, 190 Ariz. 1, 5, 945 P.2d 312, 316 (1997). And we will not reverse in the absence of prejudice. *See Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 180 Ariz. 148, 150, 882 P.2d 1274, 1276 (1994); *see also* Ariz. R. Civ. P. 61.

¶5 The confirmation hearing, including the portion in which Sanchez requested a continuance, was not reported. We must presume that the argument or evidence presented at the hearing supported the superior court's ruling. *See Hilgeman v. Am. Mortgage Sec., Inc.*, 196 Ariz. 215, ¶ 20, 994 P.2d 1030, 1036 (App. 2000). Accordingly, we cannot conclude the court abused its discretion.

¶6 Moreover, pursuant to a stipulation noted in the minute entry for the hearing, the superior court considered Sanchez's affidavits. Sanchez does not explain what evidence existed, apart from that set forth in the affidavits, that they were prevented from offering as a result of Mr. Sanchez's absence. Therefore, they have not shown any resulting prejudice, and we will not reverse. *See Canon Sch. Dist. No. 50*, 180 Ariz. at 150, 882 P.2d at 1276; *see also* Ariz. R. Civ. P. 61.

¶7 Sanchez next argues, relying on A.R.S. § 12-1512(A)(5), that the superior court erred by confirming the award because, based on standard contract law principles, the parties did not agree to arbitrate. We defer to the court with respect to its findings of facts unless those findings are clearly erroneous, but we review any conclusions of law de novo.

*See Brake Masters Sys., Inc. v. Gabbay*, 206 Ariz. 360, ¶ 12, 78 P.3d 1081, 1085 (App. 2003).

¶8 Section 12-1512 provides the exclusive bases upon which a reviewing court may refuse to confirm an arbitration award. *See Brake Masters Sys.*, 206 Ariz. 360, ¶ 11, 78 P.3d at 1085. Section 12-1512(A)(5) requires the superior court to refuse to confirm the award if “[t]here was no arbitration agreement and the issue was not adversely determined in proceedings under § 12-1502 and the adverse party did not participate in the arbitration hearing without raising the objection.” “Under our arbitration statutes, the party challenging an arbitration award generally has the burden of proving the existence of one of the statutory grounds to vacate the award.” *Brake Masters Sys.*, 206 Ariz. 360, ¶ 11, 78 P.3d at 1085. But, once again, in the absence of a transcript of the confirmation hearing, we must presume the evidence presented supports the superior court’s decision. *See Hilgeman*, 196 Ariz. 215, ¶ 20, 994 P.2d at 1036.

¶9 Additionally, based on the available record, Sanchezes did not sustain their burden to show that they “did not participate in the arbitration hearing without raising the objection.” § 12-1512(A)(5). The record does not contain a transcript or other documentation from the arbitration, except for the arbitrator’s award. And in its award, the arbitrator found the purchase contract valid but did not indicate specifically on what bases Sanchezes had objected to its validity. Therefore, we cannot determine what Sanchezes argued in the arbitration. They claim that they objected to the validity of the contract as a

whole, but they have not shown that they objected to the arbitration proceeding going forward on the ground that the parties had not agreed to arbitrate. Therefore, they have not sustained their burden. *See Brake Masters Sys.*, 206 Ariz. 360, ¶ 11, 78 P.3d at 1085. And, finally, they have neither shown nor even argued that the superior court erred in finding the arbitrator had the authority to determine whether or not the purchase contract as a whole was valid and enforceable. *See id.* ¶ 21 (once trial court finds decision within scope of arbitrator's authority, trial court must defer to decision absent showing of proper statutory ground to reject).

¶10 Because of these procedural issues, we cannot reach the substantive issue that Sanchez has attempted to re-argue here: that the purchase contract as a whole and the arbitration provision in particular, was one of adhesion, beyond the reasonable expectations of the parties and unconscionable. The judgment of the superior court is affirmed. MVR is awarded its reasonable attorney fees on appeal pursuant to A.R.S. § 12-341.01, upon compliance with Rule 21, Ariz. R. Civ. App. P.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge